

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CARL BENNETT #298713,

Plaintiff,

Case No. 15-cv-14465  
Hon. Matthew F. Leitman

v.

MICHIGAN DEPARTMENT OF CORRECTIONS,  
JACKSON ALLEGIANCE HOSPITAL, and  
DOCTOR MAHENDER MACHA,

Defendants.

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**ORDER (1) OVERRULING PLAINTIFF’S OBJECTION (ECF #66) TO  
THE REPORT AND RECOMMENDATION (ECF #59); (2) ADOPTING  
THE RECOMMENDED DISPOSITION IN THE REPORT AND  
RECOMMENDATION (ECF #59); (3) GRANTING DEFENDANT  
MACHA’S MOTION TO DISMISS (ECF #49); AND (4) DISMISSING  
PLAINTIFF’S CLAIMS AGAINST DEFENDANT MACHA WITH  
PREJUDICE**

Plaintiff Carl Bennett (“Bennett”) is a former inmate in the Michigan Department of Corrections (the “MDOC”). On December 24, 2015, Bennett filed a *pro se* prisoner civil-rights Complaint in which he alleged, among other things, that the MDOC was indifferent to his medical needs. (*See* Compl., ECF #1.) Bennett later retained counsel, and his counsel filed an Amended Complaint on his behalf. (*See* Am. Compl., ECF #34.) The Amended Complaint asserts two state-law claims against Defendant Mahender Macha, M.D. (“Macha”): (1) medical malpractice and (2) negligent infliction of emotional distress. (*See id.*)

On May 24, 2017, Macha filed an answer to the Amended Complaint. (*See* ECF #48.) Then, on July 21, 2017, Macha moved to dismiss Bennett’s Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (*See* ECF #49.)

The Court referred Macha’s motion to the assigned Magistrate Judge. On September 18, 2017, the Magistrate issued a Report and Recommendation which he recommended that the Court grant the motion and dismiss Bennett’s claims against Macha with prejudice (the “R&R”). (*See* ECF #59.) The Magistrate Judge first noted that Macha’s motion under Rule 12(b)(6) was not timely because Macha filed the motion after filing his answer. (*See* R&R, ECF #59 at Pg. ID 899.) The Magistrate Judge then construed Macha’s post-answer Rule 12(b)(6) motion as a motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure, and the Magistrate Judge explained that that motion should be granted. (*See id.* at Pg. ID 899-900.)

On November 13, 2017, Bennett filed an untimely objection to the R&R. (*See* Objection, ECF #66.) Bennett’s single objection is that “Defendant’s motion should have been denied as untimely because Defendant already filed a responsive pleading nearly two months before it filed this motion to dismiss.” (*Id.* at Pg. ID 1001.) The Court disagrees and overrules Bennett’s objection.

A district court may construe a post-answer Rule 12(b)(6) motion as a Rule 12(c) motion where the basis of the motion – as an attack on the sufficiency of the claims as pleaded – is clear. *See Wagner v. Higgins*, 754 F.2d 186, 188 (6th Cir. 1985) (holding that a motion’s “incorrect reference” to Rule 12(b)(6) rather than to Rule 12(c) “is not fatal where the substance of the motion is plain”); *see also Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 n.1 (6th Cir. 1988) (noting that a motion referring to Rule 12(b)(6) but filed after an answer “may be properly considered as one for judgment on the pleadings under Fed.R.Civ.P. 12(c), and evaluated, nonetheless, under the standards for dismissal under Rule 12(b)(6)”: *Satkowiak v. Bay Cty. Sheriff’s Dep’t*, 47 F. App’x 376, 377 n.1 (6th Cir. 2002) (treating post-answer Rule 12(b)(6) motion as one for judgment on the pleadings brought under Rule 12(c)). Thus, the Magistrate Judge did not err in treating Macha’s motion as a Rule 12(c) motion and in ruling on the merits of the motion even though Macha filed the motion after the answer.<sup>1</sup>

Accordingly, **IT IS HEREBY ORDERED** that:

1. Bennett’s Objection to the R&R (ECF #66) is **OVERRULED**;
2. The Court **ADOPTS** the recommended disposition in the R&R (ECF #59):

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<sup>1</sup> Bennett does not challenge the Magistrate Judge’s conclusion that Bennett failed to state a viable claim against Macha. Bennett’s sole argument was that Macha’s challenge to his (Bennett’s) claims was untimely and not properly before the Court.

3. Defendant Macha's motion to dismiss (ECF #49) is **GRANTED**; and
4. The claims against Defendant Macha in the Amended Complaint (ECF #34) are **DISMISSED WITH PREJUDICE**.

s/Matthew F. Leitman  
MATTHEW F. LEITMAN  
UNITED STATES DISTRICT JUDGE

Dated: December 18, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 18, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda  
Case Manager  
(810) 341-9764